N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2007

CORAM

THE HONOURABLE MR.JUSTICE V.DHANAPALAN

W.P.No.1602 of 2003

A.Senthilnathan ... Petitioner

vs.

1. The Joint Registrar of Co-operative Societies/
Special Officer, Triplicane Urban Co-operative
Society Ltd., 119, Big Street,
Triplicane, Chennai 600 005.

2. The Deputy Registrar of Co-operative
Societies, Kancheepuram. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records pertaining to the order passed by the first respondent in her Proceedings Na.Ka.No.2221/02/E2 dated 12.12.2002 and the consequential proceedings Na.Ka.No.2221/02/E2 dated 27.12.2002 and quash the same.

For Petitioner : Mr.T.Sellapandian

For Respondents : Mr.P.Anbarasan, for R1
Mr.A.Edwin Prabhakar,
Addl. Government Pleader (W), for R2

O R D E R

This writ petition is filed to quash the order of the first respondent in her Proceedings Na.Ka.No.2221/02/E2 dated 12.12.2002 and the consequential proceedings Na.Ka.No.2221/02/E2 dated 27.12.2002.

2. The case of the petitioner, in a nutshell, is as follows :

(i) The petitioner having obtained a Diploma in Co-operation was appointed as Sales Assistant on compassionate ground in February, 1999 as his father died while working as Accountant in the Society. He was posted in the Sales Centre at Liquor Retail Shop on 21.03.2002. While so, stock verification took place at 9.00 a.m. on 01.06.2002. The petitioner had applied for Medical Leave for 20 days from 01.06.2002 and had extended it for a period of 10 days. On the date when the stock verification took place, the petitioner was on Medical Leave. He reported for duty on 01.07.2002 producing Fitness Certificate for joining duty, but the same

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was refused by the first respondent. Therefore, he sent the same through Courier requesting to allow him to join duty on 07.07.2002. But, the petitioner was placed under suspension along with two other salesmen with effect from 18.07.2002, on the ground that during stock verification, certain charges were found.

(ii) Stock verification will take place every month and the deficiency will be brought to the notice of the concerned Salesman and the same will be rectified. For the months of April and May 2002, shortages were found and the petitioner was directed to pay a sum of Rs.456.34 for April 2002 and Rs.31/- for May 2002, and he had also remitted the same. It is the general practice that if there is any shortage, 1/3rd of the liability will be fixed on the Salesmen, who were on duty. In June 2002, shortages were found for Rs.85,375/- and 1/3rd liability was fixed on three Salesmen, including the petitioner. The petitioner was placed under suspension on 18.07.2002 and an order of recovery was passed on 17.07.2002. The petitioner claims that the order of suspension does not bind on him, since he was on medical leave during June 2002, thereby, he is in no way responsible for the stock deficiencies.

(iii) As against the order of suspension and the consequential order of recovery, the petitioner filed a Writ Petition in W.P.No.37580 of 2002 and this Court passed an order on 04.10.2002, directing the respondents herein to complete the disciplinary proceedings within six months from the date of receipt of a copy of the order giving fair and reasonable opportunity to the petitioner and payment of subsistence allowance to him.

(iv) Enclosing a copy of the order referred to above, the petitioner made a representation to the respondents requesting to pay the subsistence allowance for the period of suspension from 18.07.2002. The respondents denied to pay the subsistence allowance on the ground that as per the order of suspension and the conditions imposed therein, the petitioner is not supposed to leave the Headquarters, whereas he has sought subsistence allowance from Thirukazhukundram, which is in violation of the order of suspension. According to the petitioner, he had not been asked to stay at the Headquarters. The statutory requirement is that he should get permission before moving out of station. Even without paying subsistence allowance, the respondents conducted domestic enquiry with reference to the disciplinary proceedings and the Enquiry Officer submitted a report on 28.11.2002, calling for an explanation as to why the petitioner should not be removed from the post.

Apprehending termination of service, the petitioner has preferred this writ petition seeking to set aside the impugned proceedings of the first respondent.

3. The Joint Registrar of Co-operative Societies, Chennai - 5, the first respondent herein filed a counter affidavit denying the averments of

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the petitioner as totally false, as detailed hereunder:

(i) The petitioner was working as a Sales Assistant in the Liquor Shop at Teynampet from 22.03.2002, handling stocks, cash, etc., whereas the other two sales staff were just attending to the sales only. But the entire stocks were under the joint custody of those three staff. In the last working day of every month or on the next day, stock verification is done and in that way, stock verification for May, 2002 was done by a Superintendent from the Head Office on 01.06.2002, commencing from 9.00 a.m. The petitioner and other two salesmen signed the Attendance Register on that day. On verification, it was found that the petitioner had duped the Management and in the course of domestic enquiry, the petitioner had himself admitted that he was in the shop on 01.06.2002, till 1.00 pm. The medical leave application submitted by the petitioner was received by the first respondent only on 04.06.2002. Since the petitioner has duped the Management, his leave applications were not sanctioned by the first respondent and he was placed under suspension from 18.07.2002.

(ii) Verification of stock for June 2002, was arranged to be done by a reliable and competent officer. He carefully verified the cartons by opening and examining each and every bottle. Based on the verification report, the deficit in stock relating to the period, January to June 2002 was arrived at Rs.85,375/- and the same three staff were held responsible for the deficit. The other two sales staff have remitted their total share of Rs.56,917/-, but the petitioner alone has not remitted his share of Rs.28,458/-. Stocks are entrusted to the sales staff under their joint custody and every time when a sales staff goes on leave, the staff concerned will cause a verification of stock and hand over the stock to the remaining staff, who will be responsible for the verified stock only. In this case, petitioner did not cause verification of stock among the sales staff and handed over the exact stock to other staff and fled from the scene, taking advantage of the wrong verification of the stock.

(iii) The petitioner was placed under suspension from 18.07.2002 and in the order of suspension No.Rc.02231/2002/E2 dated 17.07.2002, it was ordered that he should not leave the Headquarters without getting prior permission. But, the petitioner, without getting prior permission from the Management, has claimed subsistence allowance staying in Thirukazhukundram, Chengalpet Taluk. The Management has never permitted the petitioner to stay in Thirukazhukundram and the entire charges against the petitioner were held as proved.

(iv) According to the first respondent, the management was prepared to pay the subsistence allowance, if the petitioner furnishes a certificate of residence at Headquarters and another certificate of non-employment. In the show cause notice, only the intensity of the punishment to commensurate with the gravity of the charge has been indicated so that the petitioner would be aware of the seriousness and defend himself more effectively so as to avoid any severe punishment.

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4. Heard Mr.T.Sellapandian, learned Counsel for the petitioner, Mr.P.Anbarasan, learned Counsel for the first respondent and Mr.A.Edwin Prabhakar, learned Addl. Government Pleader appearing on behalf of the second respondent.

5. Learned Counsel for the petitioner has submitted that the first respondent has issued the impugned proceedings without even considering the explanation submitted by the petitioner. He has contended that the conduct of enquiry without even making payment of subsistence allowance is illegal and without any justification. It is his further contention that the denial of subsistence allowance as if the petitioner was asked to stay at Headquarters and he has not stayed, is illegal and would amount to total non-application of mind. Learned counsel has further submitted that the petitioner has not left the Headquarters without permission and therefore, the denial to make payment of subsistence allowance is without justification. He has strenuously contended that the order of recovery imposed on the petitioner is liable to be set aside, inasmuch as the petitioner was on leave during the time of stock verification. He pleaded that the respondents be directed to pay the subsistence allowance to the petitioner from the date of suspension.

6. In support of his contentions, learned Counsel for the petitioner has placed reliance on a decision reported in 2007 (1) CTC 844 in the case of Siemens Ltd. vs. State of Maharashtra and others, wherein the Honourable Supreme Court has held as follows :

> "7. Before this Court a counter affidavit has been filed wherein although inter alia it was contended that the said show cause notice cannot be termed as an order determining the rights and obligations of the parties, it has clearly been stated :
>
> > "I say that the show cause notice dated 22.06.2005 at Annexure P-2 to the Special Leave Petition indicates that the respondent No.2-Corporation has been deprived of lawful recovery of Cess on the said goods imported within the jurisdiction of the Respondent-Corporation. I say that such evasion of Cess is in huge amounts and it is perfectly within the rights of the respondent-Corporation to call upon all the parties involved in the transactions to arrive at the exact finding of fact. I say that for arriving at the finding of fact with regard to the said imports there are many facts which need to be taken into account. I say that such factual aspects include : which is the party which has imported the goods within the jurisdictional limits of the respondent-Corporation what is the nature of contract between the seller and the said importer of goods, is there any mechanism used by the parties to avoid payment

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of Cess on the said import of goods, what is the extent of Cess that is evaded as a result of such mechanism and who ultimately can be held responsible both for the purposes of recovery as also for the purpose of penalty."

7. Learned Counsel for the first respondent strongly objected to the contentions raised by the learned Counsel for the petitioner. He contended that it is incorrect to state that the petitioner was on leave during June 2002. He submitted that the Management was ready to pay the subsistence allowance, but the petitioner did not come forward to receive it, after giving a certificate of stay at headquarters. It was his further contention that the petitioner cannot be said to have been prejudiced, as he had participated in the enquiry without being handicapped on account of it. Learned Counsel submitted that the order of suspension is valid in the eyes of law, since the petitioner has caused loss to the Government by way of deficit in stock and he prayed for dismissal of the writ petition.

8. Admittedly, the petitioner was working as a Sales Assistant in the Liquor Shop at Teynampet. It is also an admitted fact that stock verification takes place every month and the liability to pay the deficit stock is shared amongst the salesmen, who are responsible for maintaining the stock. It is seen from the averments of the petitioner that on earlier occasions, during stock verification, 1/3rd liability of deficit was ordered to be recovered from him and he had paid the same. According to the first respondent, stock verification has taken place on 01.06.2002 and the petitioner's presence in the stock verification is confirmed by his signature in the Attendance Register. But, the petitioner claims that he had been on medical leave during June 2002. It is seen from the counter of the first respondent that the other two sales staff against whom charges have been framed have given statements before the Enquiry Officer about the presence of the petitioner during stock verification. In view of the above, it is clear that the petitioner was present during the stock verification, which took place on 01.06.2002 and the averment that he has caused loss to the first respondent Society by duping the Management is also confirmed.

9. The first respondent, in his proceedings dated 17.07.2002, has ordered that the petitioner should not leave the headquarters without getting prior permission. While that be so, the petitioner has moved out of station without getting prior permission from the authority concerned and he has claimed subsistence allowance staying in Thirukazhukundram, Chengalpet Taluk. In the counter filed by the first respondent, it is clearly stated that the Management is prepared to pay the subsistence allowance, if the petitioner furnishes a certificate of residence at Headquarters. While the first respondent has made it clear in his impugned proceedings that the petitioner should not leave the Headquarters without prior permission, the petitioner has not obeyed the condition

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imposed therein. Unless prejudice is shown and established, mere non-payment of subsistence allowance cannot ipso facto be a ground to vitiate the proceedings in every case and it has to be specifically pleaded and established as to in what way the affected employee was handicapped because of non-receipt of subsistence allowance as held by the Honourable Supreme Court in its decision reported in (2005) 8 SCC 211 in the case of U.P.State Textile Corporation Ltd., vs. P.C.Chaturvedi and others. Therefore, the petitioner's claim regarding the payment of subsistence allowance is not valid. Though the petitioner was given an opportunity to substantiate his claim, he had not availed the opportunity and without even giving an explanation to the show cause notice issued by the first respondent, he has approached this Court.

10. In view of the foregoing discussion, this Court is of the considered opinion that the petitioner has not effectively utilized the opportunity given to him, in spite of having caused loss to the first respondent Society. Since the petitioner has not complied with the condition in the suspension order, the relief sought by him before this Court cannot be granted at this stage. However, it is open to the petitioner to give his explanation to the show cause notice and it is upto the first respondent to consider the same in respect of payment of subsistence allowance alone in case the petitioner is able to substantiate his case by furnishing any material evidence.

Accordingly, the writ petition, which is devoid of any merit fails and is dismissed with the above directions. No costs. Consequently, connected W.P.M.P.No.2018 of 2003 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To :

1. The Joint Registrar of Co-operative Societies/
   Special Officer,
   Triplicane Urban Co-operative Society Ltd.,
   119, Big Street,
   Triplicane, Chennai 600 005.

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2. The Deputy Registrar of Co-operative
Societies, Kancheepuram.

+ 1 CC To Mr. S.Mani, Advocate SR NO.44718

+ 1 CC To Mr. P.Anbarasan, Advocate SR NO.44523

W.P.No.1602 of 2003

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